IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.Rev.Pet.No. 4262 of 2006()

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CRA.34/2003 of II ADDL. SESSIONS COURT, TRIVANDRUM
CC.679/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL

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REVN. PETITIONER/APPELLANT/ACCUSED:

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PRABHA KUMAR @ MANIKUTTAN,
S/O.BHASKARA KURUP, GOPIKA KNIVAS,
THENGUMKODU, KALLARA VILLAGE.

BY ADV. SRI.M.DINESH
SMT.K.I.ANITHA

RESPONDENT/ RESPONDENT/COMPLAINANT:

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THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.R.UDAYABHANU, J**

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CRL.R.P.No.4262 of 2006

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Dated this the 19th day of February, 2007

**ORDER**

Revision petitioner stands convicted for the offence under Sections 279, 337 and 338 IPC and sentenced, as modified by the appellate court, to a fine of Rs.1,000/- under Section 279 IPC and 15 days simple imprisonment and a fine of Rs.1,000/- under Section 338 of IPC.

2. The case of the prosecution is that on 21.2.2001, at 9 P.M., the accused drove an autorickshaw bearing registration No.KL01 F 6875, without obtaining fitness certificate, insurance certificate and license, in a rash and negligent manner and the vehicle capsized and CW's 1 and 2, the passengers sustained injuries including fracture on the distal portion of left leg toe of CW2. It is contended by the counsel for the revision petitioner that there is no evidence identifying the accused. There is delay of 30 days in lodging the complaint. AMVI was not examined. Hence, it is not evident that the accident took place not on account of mechanical defects of the vehicle.

3. In view of the evidence in the case, I find that prosecution has failed to establish that the accused drove the vehicle when the accident took place. Non existence of any mechanical defect of the vehicle was not proved. Further the delay stands not explained. These aspects were not considered by the trial court as well as by the appellate court. In these circumstances, I find that the conviction and sentence cannot be sustained. The same is set aside. The accused stands acquitted.

The Criminal Revision Petition is allowed accordingly.

**K.R.UDAYABHANU,**
**JUDGE**

csl

**K.R.UDAYABHANU, J**

Crl.R.P.No.899 of 2001

**ORDER**

15th February, 2007